

**DISTRICT OF COLUMBIA**  
**DOH Office of Adjudication and Hearings**  
825 North Capitol Street N.E., Suite 5100  
Washington D.C. 20002

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

B&J CARRYOUT and  
BOBBY DONALDSON  
Respondents

Case Nos.: I-00-30183  
I-00-70267

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**FINAL ORDER**

**I. Introduction**

These cases arise under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1802.01 *et seq.*) and Title 23 Chapter 30 of the District of Columbia Municipal Regulations (“DCMR”). On March 19, 2001<sup>1</sup>, this administrative court issued a Final Notice of Default in this matter in light of Respondents’ failure to timely respond to the first Notice of Infraction (I-00-30183) served on November 20, 2000, and the second Notice of Infraction (I-00-70267) served on January 11, both of which charged Respondents with a violation of 23 DCMR 3012.1 (failure to take all necessary precautions to keep the premises free from rats and vermin). In addition to assessing the applicable statutory penalties pursuant to D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1801.04(a)(2)(B) due to Respondents’ failure to respond to the Notices

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<sup>1</sup> Unless specified otherwise, all dates listed herein occurred during 2001.

of Infraction, the March 19 order scheduled an *ex parte* proof hearing for April 18 at which Respondents could elect to appear to contest liability, fines, penalties or fees in accordance with law.

The Government and Respondents appeared at the April 18 hearing, at which time Respondents entered a plea of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2), along with a request for a reduction or suspension in the authorized fine and statutory penalties. As part of their explanation, Respondent Bobby Donaldson explained that he believed he was in the hospital around the time of the issuance of the first Notice of Infraction, and that he had forwarded the Government a letter of explanation sometime in February. The Government had no record of this letter, however. This administrative court left the record open until April 25 in order for Respondents to submit documentary evidence supporting these assertions.

On April 25 and April 27, this administrative court received submissions from Respondents in the form of hospital admission records (Respondent's Exhibit ("RX") 202) and an April 26 letter of explanation (RX 203), respectively. Respondent Donaldson explained that he had appeared for the pre-scheduled hearing date of February 14 as reflected on the Notices of Infraction and did not know until that day that, pursuant to this administrative court's December 27, 2000 default order, that hearing had been canceled.

On May 16, the Government responded to Respondents' submission. The Government objected to a suspension or reduction of the authorized fine and statutory penalties noting that,

among other things, the documents supplied by Respondents did not “provide a significant explanation for the infractions.”

## **II. Findings of Fact**

1. At all relevant times, Respondent Bobby Donaldson was an owner of Respondent B&J Carryout & Restaurant located at 238 Rhode Island Avenue, NW.
2. By their plea of Admit with Explanation, Respondents admit they violated 23 DCMR 3012.1 on October 31, 2000.
3. On October 31, 2000, Respondents failed to take all necessary precautions to keep the premises of their restaurant free from rats and vermin.
4. Respondent Donaldson explained that he delayed in responding to the first Notice of Infraction (I-00-30183) served November 20, 2000 because he was in the hospital around those times being treated for diabetes. According to the medical records submitted by Respondents, however, Mr. Donaldson was admitted to the Washington Hospital Center on November 2, 2000 and was discharged on November 4, 2000. *See* RX 202. Respondents offered no explanation for their failure to timely respond to the second Notice of Infraction (I-00-70267) served January 11.
5. Although they did not respond to the first or second Notices of Infraction as is specified on the Notice of Infraction forms, Respondents appeared for a pre-scheduled evidentiary hearing on February 14 that had been canceled pursuant to this administrative court’s December 27, 2000 default order. RX 203.

6. Respondents had contracted for monthly pest control services with Matar Chemical Group U.S.A., Inc. as early as July, 2000. RX 200.
7. Respondents have accepted responsibility for their unlawful conduct.

### **III. Conclusions of Law**

1. Respondents violated 23 DCMR 3012.1 on October 31, 2000. A fine of \$1000 is authorized for a first offense of that violation. 16 DCMR §§ 3201.1(a)(1), 3216.1(o). Respondents have requested a reduction or suspension of the authorized fine. In light of Respondents' acceptance of responsibility and on-going efforts to keep their premises free from rodents and vermin through the regular use of an exterminator service both prior to the cited violation as well as after, I will reduce the fine to \$650. D.C. Official Code §§ 2-1802.02(a)(2), 2-1801.03(b)(6); 18 U.S.C. § 3553; U.S.S.G. § 3E1.1.
2. Respondents have also requested a reduction or suspension in the applicable statutory penalties. If a respondent fails without good cause to answer a Notice of Infraction within the allotted time period (fifteen (15) days from service plus five (5) days for mailing pursuant to D.C. Official Code §§ 2-1802.02(c), 2-1802.05), a statutory penalty equal to the amount of the fine shall be assessed, and a second Notice of Infraction is issued. D.C. Official Code §§ 2-1801.04(a)(2)(A), 2-1802.02(f). If a respondent similarly fails to answer the second Notice of Infraction, the statutory penalty doubles. D.C. Official Code § 2-1801.04(a)(2)(B).

3. Respondents have not established good cause for failing to timely respond to the first and second Notices of Infraction issued in this case. Mr. Donaldson's assertion that he was hospitalized around the time of the issuance of the first Notice of Infraction is, based on Respondents' own submission, inaccurate. RX 202. Indeed, Mr. Donaldson was discharged from the Washington Hospital Center some two weeks prior to the issuance of the first Notice of Infraction. *Id.*
4. Moreover, Respondents offer no explanation for failing to respond to the second Notice of Infraction. Although I find that Respondents did in fact appear on the February 14 pre-scheduled hearing date (which had been canceled some six weeks prior by a December 27, 2000 order of this administrative court), that is insufficient to establish good cause. *DOH v. Isle of Patmos Child Development Center*, OAH No. I-00-40239 at 7-8 (Final Order, March 8, 2001) (concluding Respondents' belief that attending pre-scheduled hearing was sufficient for purposes of responding to Notice of Infraction was unreasonable given clear warning on Notice of Infraction, and therefore did not establish good cause for untimely response); *DOH v. JV Trucking*, OAH No. I-00-10445 at 5; (Final Order, February 28, 2001) (same); *DOH v. Watergate Fitness Center*, OAH No. I-00-30137 at 4-6 (Final Order, December 13, 2000) (same).
5. Accordingly, Respondents have not established good cause for failing to timely respond to the first and second Notices of Infraction, and statutory penalties of \$2000, in addition to the fine, shall be imposed without reduction. D.C. Official Code § 2-1802.02(f).

#### **IV. Order**

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this \_\_\_\_ day of \_\_\_\_\_, 2002:

**ORDERED**, that Respondents, who are jointly and severally liable, shall pay a fine and statutory penalties in the total amount of **TWO THOUSAND SIX HUNDRED FIFTY DOLLARS (\$2,650)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that, if Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondents pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/      **1/30/02**

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Mark D. Poindexter  
Administrative Judge